

Introduced by Senators Burton, Chesbro, and Ducheny

December 2, 2002

An act to amend Section 5097.94 of the Public Resources Code, relating to Native American sacred places, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as introduced, Burton. Native American sacred places.

(1) Existing law authorizes the Native American Heritage Commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property. Existing law requires that if the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise.

This bill would make clarifying changes.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5097.94 of the Public Resources Code
2 is amended to read:

1 5097.94. The commission shall have the following powers
2 and duties:

3 (a) To identify and catalog places of special religious or social
4 significance to Native Americans, and known graves and
5 cemeteries of Native Americans on private lands. The
6 identification and cataloging of known graves and cemeteries
7 shall be completed on or before January 1, 1984. The commission
8 shall notify landowners on whose property such graves and
9 cemeteries are determined to exist, and shall identify the Native
10 American group most likely descended from those Native
11 Americans who may be interred on the property.

12 (b) To make recommendations relative to Native American
13 sacred places that are located on private lands, are inaccessible to
14 Native Americans, and have cultural significance to Native
15 Americans for acquisition by the state or other public agencies for
16 the purpose of facilitating or assuring access thereto by Native
17 Americans.

18 (c) To make recommendations to the Legislature relative to
19 procedures which will voluntarily encourage private property
20 owners to preserve and protect sacred places in a natural state and
21 to allow appropriate access to Native American religionists for
22 ceremonial or spiritual activities.

23 (d) To appoint necessary clerical staff.

24 (e) To accept grants or donations, real or in kind, to carry out
25 the purposes of this chapter.

26 (f) To make recommendations to the Director of Parks and
27 Recreation and the California Arts Council relative to the
28 California State Indian Museum and other Indian matters touched
29 upon by department programs.

30 (g) To bring an action to prevent severe ~~and~~ or irreparable
31 damage to, or assure appropriate access for Native Americans to,
32 a Native American sanctified cemetery, place of worship, religious
33 or ceremonial site, or sacred shrine located on public property,
34 pursuant to Section 5097.97. If the court finds that severe ~~and~~ or
35 irreparable damage will occur or that appropriate access will be
36 denied, and appropriate mitigation measures are not available, it
37 shall issue an injunction, unless it finds, on clear and convincing
38 evidence, that the public interest and necessity require otherwise.
39 The Attorney General shall represent the commission and the state
40 in litigation concerning affairs of the commission, unless the



1 Attorney General has determined to represent the agency against
2 whom the commission's action is directed, in which case the
3 commission shall be authorized to employ other counsel. In any
4 action to enforce the provisions of this subdivision the commission
5 shall introduce evidence showing that such cemetery, place, site,
6 or shrine has been historically regarded as a sacred or sanctified
7 place by Native American people and represents a place of unique
8 historical and cultural significance to an Indian tribe or
9 community.

10 (h) To request and utilize the advice and service of all federal,
11 state, local, and regional agencies.

12 (i) To assist Native Americans in obtaining appropriate access
13 to sacred places that are located on public lands for ceremonial or
14 spiritual activities.

15 (j) To assist state agencies in any negotiations with agencies of
16 the federal government for the protection of Native American
17 sacred places that are located on federal lands.

18 (k) To mediate, upon application of either of the parties,
19 disputes arising between landowners and known descendents
20 relating to the treatment and disposition of Native American
21 human burials, skeletal remains, and items associated with Native
22 American burials.

23 The agreements shall provide protection to Native American
24 human burials and skeletal remains from vandalism and
25 inadvertent destruction and provide for sensitive treatment and
26 disposition of Native American burials, skeletal remains, and
27 associated grave goods consistent with the planned use of, or the
28 approved project on, the land.

29 (l) To assist interested landowners in developing agreements
30 with appropriate Native American groups for treating or
31 disposing, with appropriate dignity, of the human remains and any
32 items associated with Native American burials.

33 SEC. 2. This act is an urgency statute necessary for the
34 immediate preservation of the public peace, health, or safety
35 within the meaning of Article IV of the Constitution and shall go
36 into immediate effect. The facts constituting the necessity are:

37 In order to stem the continuing loss of sacred sites as soon as
38 possible, it is necessary that this act go into effect immediately.

